

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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|--|---|---------------------------|
| In the matter of                               | ) |                           |
|  | ) |                           |
| J & W Promotions, Inc.                         | ) |                           |
|  | ) | File No. EB-02-AT-277     |
| Licensee of AM Radio Station WAPZ, Wetumpka,   | ) |                           |
| Alabama, and Owner of Unregistered Antenna     | ) | NAL/Acct No. 200232480016 |
| Structure Located at 32° 29' 06" N Latitude by | ) |                           |
| 086° 12' 25" W Longitude Wetumpka, Alabama     | ) | FRN 0007-4715-50          |
|  | ) |                           |

**FORFEITURE ORDER**

**Adopted: October 28, 2003**

**Released: October 30, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000.00) to J & W Promotions, Inc. ("J & W"), for willful violations of Sections 11.35(a), 17.4(a) and 73.49 of the Commission's Rules ("Rules").<sup>1</sup> The noted violations involve J & W's failure to ensure that Emergency Alert System ("EAS") equipment was installed and operational, to register its antenna structure with the Commission, and to maintain an effective locked fence around the base of the antenna structure.

2. On August 28, 2002, the Commission's Atlanta, Georgia, Field Office ("Atlanta Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to J & W for a forfeiture in the amount of eighteen thousand dollars (\$18,000) alleging willful violation of Sections 11.35(a), 17.4(a), and 73.49 of the Commission's Rules.<sup>2</sup> J & W filed its response to the NAL on November 20, 2002.

**II. BACKGROUND**

3. J & W is the licensee of AM radio station WAPZ, Wetumpka, Alabama and owner of the station's antenna structure located at 32° 29' 06" North latitude by 086° 12' 25" West longitude. On July 25, 2002, an agent from the Atlanta Office conducted a routine inspection of the EAS equipment for Station WAPZ. At the time of the agent's inspection, the station had no EAS equipment installed or operational. The agent found no station logs indicating that the EAS equipment had been removed for repair, or that there had ever been operational EAS equipment at the station. While at the station, the agent inspected the station's antenna structure. During this inspection, the agent did not observe an Antenna Structure Registration ("ASR") number for the antenna tower anywhere near the base of the

<sup>1</sup> 47 C.F.R. § 11.35, 17.4(a) and 73.49.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480016 (Enf). Bur., Atlanta Office, released August 28, 2002).

structure. The agent inspected the station with Mr. Robert Henderson, the station's Chief Executive Officer ("CEO"). Mr. Henderson stated that J & W owned the antenna and that he believed that the tower was properly registered<sup>3</sup>. Additionally, while inspecting the station's tower, the agent observed that the waist to chest high base fencing enclosing the AM antenna tower was missing the top horizontal plank thereby permitting easy access to a tower which has radio frequency potential at its base.

4. On August 28, 2002, the Atlanta Office issued a *NAL* for a forfeiture in the amount of \$18,000 to J & W for the noted violations. In its response, filed November 20, 2002, J & W denies any violation and states that its antenna structure is registered and the equipment and fence were removed for repair at the time of inspection. Additionally, J & W seeks cancellation or reduction of the proposed monetary forfeiture. In support thereof, J & W submits tax returns from 1999 – 2000. Despite requesting additional time to produce documentation in support of its request for cancellation of the proposed fine, J & W has produced no such documentation.

### III DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining J & W's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

6. Section 11.35(a) of the Rules requires that broadcast stations have operational EAS equipment.<sup>7</sup> During the inspection no EAS equipment was present as required by our Rules. No evidence supporting possession or ownership of EAS equipment by J& W Promotions, was presented to the agent. No equipment was present, nor were any records (station logs, a repair order or a purchase order) presented to the agent which substantiated the existence of EAS equipment during the agent's presence at the station. Additionally, J & W's response to the *NAL* does not include any documentation to support its claim that the EAS equipment was removed for repair at the time of the inspection. Accordingly, we conclude J & W willfully<sup>8</sup> violated Section 11.35(a) of the Rules by failing to have operational EAS equipment installed at the station during the agent's inspection.

7. Section 17.4 of the Rules requires that after July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation

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<sup>3</sup> *NAL* at ¶ 3.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 C.F.R. § 11.35(a).

<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Administration (“FAA”) must register the structure with the Commission.<sup>9</sup> Section 17.7(a) of the Rules requires tower structures over 60.96 meters (200 feet) in height to have the owner give notification of the tower’s existence to the Federal Aviation Administration.<sup>10</sup> According to the WAPZ license, its tower is 300 feet in height. Thus, the J & W tower structure is required by our Rules to be registered. The agent searched the Commission’s ASR registration records subsequent to the inspection and found no registration for the J & W structure. Moreover, contrary to the assertions made by J & W that the tower is now registered, a subsequent search of the Commission’s ASR antenna registration records by Commission personnel as of October 15, 2003, revealed no record of antenna tower registration of the J & W tower. Accordingly, we find that J & W willfully violated Section 17.4 of the Rules by not registering its tower.

8. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences.<sup>11</sup> The tower in question has such potential. During the inspection, with Mr. Henderson present, the agent observed that a wooden fence about three to three and one-half feet in height surrounded the tower structure. The agent also observed that the fence did not effectively enclose the tower structure because the top portion of one section of the fence was missing and entrance to the structure was easily available to anyone simply by stepping over the lower railing plank remaining in that portion of the fence.<sup>12</sup> Contrary to J & W’s response, no documentation has been provided to support J & W’s assertion that the fence was undergoing repair at the time of the agent’s inspection. Accordingly, we find that J & W willfully violated Section 73.49 of the Rules.

9. J & W in its response to the *NAL* submits copies of its 1999, 2000 and 2001 federal income tax returns which suggests that that payment of the proposed forfeiture amount of \$18,000 would be a financial hardship. Upon review of this financial documentation, we find that reduction of the proposed forfeiture amount to \$3,000.00 is warranted on the basis of financial hardship.

10. We have examined J & W’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that J & W willfully violated Sections 11.35(a), 17.4(a) and 73.49 of the Rules, and that a reduction of the forfeiture amount to \$3,000 is warranted.

11. Because J & W has not provided evidence of subsequent compliance from the date of investigation, we are concerned therefore that J & W may continue to violate Sections 11.35(a), 17.4(a) and 73.49 of the Rules even after issuance of the *NAL*. Accordingly, we will require, pursuant to Section 308(b) of the Act,<sup>13</sup> that J & W report to the Enforcement Bureau within thirty (30) days of the release of this *Order* whether it has established and installed an operating EAS system, repaired its tower fencing such that it is an effective locked fence enclosure, and registered its antenna structure with the Commission. If the report indicates that J & W has registered the antenna structure with the Commission, it must specify the antenna registration number. J & W’s report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If J & W fails to submit such a report or we find that J & W has not come into compliance with our rules, we will consider further appropriate enforcement

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<sup>9</sup> 47 C.F.R. § 17.4(a).

<sup>10</sup> 47 C.F.R. § 17.7(a).

<sup>11</sup> 47 C.F.R. § 73.49.

<sup>12</sup> The inspector further observed that Mr. Henderson found the missing railing plank only after a diligent search, because the plank had been concealed by grass. Mr. Henderson attempted to reinstall the plank but was unable to do so because the plank was so warped it could not stay in place within the fence.

<sup>13</sup> 47 U.S.C. § 308(b)

action.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>14</sup> J & W Promotions, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000.00) for failure to have registered the antenna structure with the Commission, failure to have operational EAS equipment installed and failure to have an effective locked fence around the antenna structure, in willful and repeated violation of Sections 11.35(a) , 17.4(a) and 73.49 of the Rules.

13. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, J & W Promotions, Inc. must submit the report described in Paragraph 11, above, within 30 days from the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A 820, Washington, D.C. 20554.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>15</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232480016 and FRN 0007-4715-50. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>16</sup>

15. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to J & W Promotions, Inc., Wetumpka, AL2821 US Highway 231 and to its counsel, Norman Hurst, Jr., Esq., 462- A Sayre Street, Montgomery, Alabama 36104.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>14</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>15</sup> 47 U.S.C. § 504(a).

<sup>16</sup> See 47 C.F.R. § 1.1914.